

Exhibit 12

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

WAYNE BERRY

Plaintiff(s),

V.

FLEMING COMPANIES, INC., aka
FLEMING FOODS, INC., aka
FLEMING, DOE INDIVIDUALS 1-50
AND DOE PARTNERSHIPS,
CORPORATIONS AND OTHER
ENTITIES 1-20

Defendant(s).

JUDGMENT IN A CIVIL CASE

Case: CV 01-00446SPK-LEK

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

January 20, 2005

At 4 o'clock and 00 min p.m.
WALTER A.Y.H. CHINN, CLERK

☒ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Judgment is entered in favor of Plaintiff Wayne Berry in the amount of \$98,250.00 against Defendant Fleming Companies as to Freight Control System Software; and in favor of Defendant Fleming Companies as to Crystal Reports Software and Fleming PO.EXE Software pursuant to the "Special Verdict Form" filed March 6, 2003 and the "Order Denying Post-Trial Motions" filed on December 27, 2004.

IT IS FURTHER ORDERED AND ADJUDGED that the Court finds Plaintiff Wayne Berry the prevailing party for purposes of 17 U.S.C. § 505 and awards attorneys' fees of \$28,368.79 and costs of \$17,217.93 for a total award of \$45,586.72 pursuant to the "Order Denying Defendant's Motion For Attorneys' Fees and Granting in Part Plaintiff's Motion for Award of Attorneys' Fees and Full Costs" filed on December 28, 2004.

cc: all counsel of record

January 20, 2005

Date

WALTER A.Y.H. CHINN

Clerk

(By) Deputy Clerk

2. Did Fleming Companies, Inc. prove by a preponderance of the evidence that it has a valid license for the use of the Freight Control software.

Yes ☒ No ☐

If "YES" go to next question.

If "NO" go to question 4.

3. Did Wayne Berry prove by a preponderance of the evidence that Fleming made unauthorized changes to the Freight Control software.

Yes ☒ No ☐

If "NO" skip to section B.

If "YES" go to next question.

4. Was the infringement of the Freight Control software copyright willful?

Yes ☒ No ☐

Go to the next question.

5. What amount of damages is Wayne Berry entitled to for the infringement of Freight Control System software?

\$99,250.00

B. CRYSTAL REPORTS SOFTWARE

1. Has Plaintiff Wayne Berry proven by a preponderance of the evidence that he is the owner of the copyright to the Crystal Reports software attached to Exhibit 222?

Yes ☒ No ☐

If "NO", skip to section C.

If "YES" go to next question.

2. Did Fleming Companies, Inc. prove by a preponderance of the evidence that it has a valid license for the use of the Crystal Reports software.

Yes ☒ No ☐

If "YES" go to next question.

If "NO" go to question 4.

3. Did Wayne Berry prove by a preponderance of the evidence that Fleming made unauthorized changes to the Crystal Reports software.

Yes ☐ No ☒

If "NO" skip to section C.

If "YES" go to next question.

4. Was the infringement of the Crystal Reports software copyright willful?

Yes ☐ No ☐

Go to the next question.

5. What amount of damages is Wayne Berry entitled to for the infringement of Crystal Reports software?
- _____

C. FLEMINGPO.EXE SOFTWARE

1. Has Plaintiff Wayne Berry proven by a preponderance of the evidence that he is the owner of the copyright to the FlemingPO.exe software attached to Exhibit 223?

Yes X

No _____

If "YES" go to next question.

If "NO", skip to the end.

2. Did Fleming Companies, Inc. prove by a preponderance of the evidence that it has a valid license for the use of the FlemingPO.exe software.

Yes X

No _____

If "YES" go to next question.

If "NO" go to question 4.

3. Did Wayne Berry prove by a preponderance of the evidence that Fleming made unauthorized changes to the FlemingPO.exe software.

Yes _____

No X

If "NO" skip to the end.

If "YES" go to next question.

4. Was the infringement of the FlemingPO.exe software copyright willful?


Yes _____

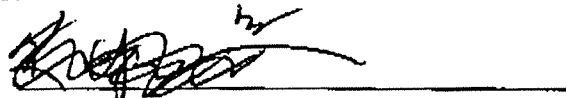
No _____

Go to the next question.

5. What amount of damages is Wayne Berry entitled to for the infringement of FlemingPO.exe software?

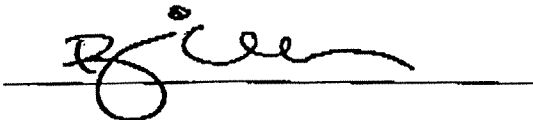
Please sign and date this Special Verdict Form.


Jury Foreperson

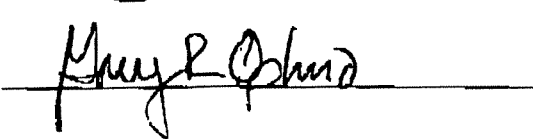


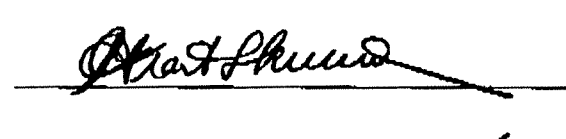



Carol Ho Akimoto



A K A






Date
3/6/03